



COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100
www.ladpw.org

JAMES A. NOYES, Director

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

June 5, 2002

IN REPLY PLEASE
REFER TO FILE:

MP-6
36.042

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

SANTA ANITA WASH - PARCEL 12L
LEASE AGREEMENT
CITY OF ARCADIA
SUPERVISORIAL DISTRICT 5
3 VOTES

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find this transaction categorically exempt from the provisions of the California Environmental Quality Act (CEQA).
2. Approve the enclosed 20-year Lease Agreement between the Los Angeles County Flood Control District and Fifth Avenue Group LLC, a Limited Liability Company, for parking purposes in Santa Anita Wash, Parcel 12L, located north of East Huntington Drive and west of Fifth Avenue, in the City of Arcadia, at an initial rent of \$11,200 per year.
3. Instruct the Chairman to sign the Lease Agreement and authorize delivery to the Lessee.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

This action will allow the Los Angeles County Flood Control District to lease the land along the easterly bank of the Santa Anita Wash to the Fifth Avenue Group LLC for 20 years for parking purposes. The lease premises are located north of East Huntington Drive and west of Fifth Avenue, in the City of Arcadia.

The Honorable Board of Supervisors
June 5, 2002
Page 2

Implementation of Strategic Plan Goals

This action is consistent with the Strategic Plan Goal of Fiscal Responsibility. The revenue from this lease will be used for flood control purposes and the leasing of the property will enhance future revenues through assessment and taxation.

FISCAL IMPACT/FINANCING

The first year's rent is \$11,200 and has been paid and deposited into the Flood Control District Fund. Subsequent years' rent shall be adjusted annually based on the Consumer Price Index for All Urban Consumers, with a reappraisal every five years.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

County Counsel has reviewed and approved this Lease Agreement as to form.

ENVIRONMENTAL DOCUMENTATION

This Lease Agreement is categorically exempt, as specified in Class 4(j) of the Environmental Document Reporting Procedures and Guidelines adopted by your Board on November 17, 1987, Synopsis 57, and Section 15304 of State CEQA Statutes and Guidelines.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

None

The Honorable Board of Supervisors
June 5, 2002
Page 3

CONCLUSION

This action is in the District's interest. Enclosed are three originals of the Lease Agreement. Please have the originals signed by the Chairman and acknowledged by the Executive Officer of the Board of Supervisors. Please return two executed originals to this office, retaining one original for your files.

Respectfully submitted,

JAMES A. NOYES
Director of Public Works

DKW:adg
P6\SANTA ANITA 12L BRD

Enc.

cc: Auditor-Controller (Accounting Division - Asset Management)
Chief Administrative Office
County Counsel

RECORDING REQUESTED BY AND)
WHEN RECORDED MAIL TO:)
)
)
)
)
)
)

FILE WITH:
Lease Agreement No. _____
Project/Stream: Santa Anita Wash
Right of Way Map No. 36RW
Right of Way Parcel: 12 (por.)
Assessor Parcel No. 5773-009-967
Thomas Brothers Map Book
Page and Grid No. 567 E-5

LEASE AGREEMENT

Dated as of _____

By and between

THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT

and

FIFTH AVENUE GROUP LLC

MAIL TAX STATEMENTS TO RETURN ADDRESSEE ABOVE

TABLE OF CONTENTS

LEASE AGREEMENT

RECITALS

ARTICLE 1. DESCRIPTION AND ACCEPTANCE OF PREMISES

- A. Description
- B. Acceptance

ARTICLE 2. USE

- A. Description
- B. Interference with flood control

ARTICLE 3. LEASE TERM

- A. Term A
- B. Term B
- C. Option to Extend
- D. Cancellation

ARTICLE 4. RENT

- A. First Year Rent
- B. Rent Adjustment Based on CPI
- C. Rent Adjustment Based Upon Appraised Land Value
- D. Late Payment
- E. Net Lease
- F. Proration

ARTICLE 5. SITE ASSESSMENT

- A. Access
- B. Testing
- C. Requirements and Remediation

ARTICLE 6. SECURITY DEPOSIT

- A. Amount and Acceptable Forms of Security Deposit
- B. Availability and Uses of Security Deposit

ARTICLE 7. FLOOD CONTROL AND WATER CONSERVATION PRIORITY

- A. Priority of Premises

ARTICLE 8. CONSTRUCTION AND ALTERATION

- A. LESSEE's Right to Construct and Alter
- B. Approval by DISTRICT As to Compatibility
- C. Responsibility of LESSEE to Obtain Permits
- D. Incorporation of Permit by Reference
- E. Loading and Materials Stockpiling Limitations

ARTICLE 9. OWNERSHIP AND DISPOSITION OF IMPROVEMENTS

- A. Ownership
- B. Termination and Removal
- C. Termination and Rendering Inoperable
- D. Testing and Remediation to Perform at Lease Termination

ARTICLE 10. SURETY BOND

- A. Performance and Payment Bonds
- B. Alternatives To Surety Bonds

ARTICLE 11. REPAIRS AND MAINTENANCE

- A. LESSEE Responsible for Repairs and Maintenance
- B. Emergency Conditions
- C. Approvals by DISTRICT

ARTICLE 12. TAXES AND ASSESSMENTS

- A. Payment of Taxes
- B. Fees
- C. Payment by DISTRICT
- D. Commencement and Expiration

ARTICLE 13. LIENS AND CLAIMS

ARTICLE 14. INDEMNITY AND INSURANCE

- A. Indemnity
- B. Insurance
 - 1. Comprehensive Liability Insurance
 - 2. Comprehensive Auto Liability
 - 3. Other Insurance Requirements
 - 4. Use for Funds for Repair and Restoration
 - 5. Insurance Trustee
 - 6. Right of DISTRICT to Insure
- C. Uninsured Casualty
- D. Effect of Destruction

ARTICLE 15. ASSIGNMENT AND SUBLETTING

- A. Conditions for Assignment of Leasehold
- B. Procedure for Assignment
- C. Subletting

ARTICLE 16. NO SUBORDINATION

ARTICLE 17. RIGHT TO ENCUMBER - HYPOTHECATE LEASEHOLD

- A. Right to Encumber - Hypothecate Leasehold
- B. Lender's Right to Cure Defaults Under Encumbrance

ARTICLE 18. BANKRUPTCY OR INSOLVENCY

- A. Breach
- B. Lease Termination

ARTICLE 19. CONDEMNATION

- A. Total Take
- B. Partial Take
- C. Temporary Take
- D. Applicability of Article
- E. Waiver

ARTICLE 20. DEFAULT

ARTICLE 21. REMEDIES FOR DEFAULT

- A. DISTRICT Rights Arising from LESSEE Default
- B. Rent Due and Rights Not Waived In Event of Default

ARTICLE 22. SALE OF THE PREMISES BY DISTRICT

ARTICLE 23. HAZARDOUS SUBSTANCES

- A. Definition
- B. Warranties and Representations
- C. Notice
- D. Damage/Spillage
- E. Indemnity
- F. Default
- G. Survival

ARTICLE 24. ESTOPPEL CERTIFICATES

ARTICLE 25. JOINDER IN INSTRUMENTS; LOT SPLIT, ZONING

ARTICLE 26. EXCUSABLE DELAYS

ARTICLE 27. NON-DISCRIMINATION

- A. Use of The Premises
- B. Employees
- C. Subcontractors
- D. Records
- E. Breach

ARTICLE 28. QUIET ENJOYMENT

ARTICLE 29. RESERVATIONS

- A. Reservation to Use of The Premises
- B. Right of Entry for Inspection, Emergencies, etc

ARTICLE 30. WARRANTIES

- A. No Warranty of Title
- B. No Warranty of Soil
- C. No Warranty of Use

ARTICLE 31. OPERATIONS AND SUPERVISION

- A. Operations
- B. Supervision by LESSEE

ARTICLE 32. MISCELLANEOUS

- A. Notices
- B. Attorney's Fees
- C. Waiver
- D. Holding Over
- E. Lease Binding Upon Successors and Assigns
- F. Covenants
- G. Negation of Partnership
- H. Quitclaim
- I. Number and Inclusion, Joint and Several
- J. Headings and Titles
- K. Compliance with Governmental Regulations
- L. Ineligibility for Relocation Assistance
- M. Storage of Materials
- N. Entire Lease
- O. Time of Essence
- P. Claims and Protest
- Q. Monetary Obligations as Rent
- R. Savings Clause
- S. Protection of The Premises
- T. Authority to Enter Lease

ARTICLE 33. RECORDATION OF LEASE

ARTICLE 34. COUNTY LOBBYIST

ARTICLE 35. DECLARATION OF KNOWLEDGE BY LESSEE

ARTICLE 36. DEFINITIONS

ACKNOWLEDGMENTS

Exhibit "A: Property Description"

LEASE AGREEMENT

THIS LEASE AGREEMENT is entered into and is effective this ____ day of _____, 20____, by and between the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic (hereinafter "DISTRICT"), and FIFTH AVENUE GROUP LLC, a Limited Liability Company (hereinafter "LESSEE").

RECITALS

WHEREAS, DISTRICT holds fee title to portions of Santa Anita Wash, including certain open flood control channel improvements constructed thereon;

WHEREAS, LESSEE desires to lease a portion of the Santa Anita Wash right of way for vehicular parking purposes and no other;

WHEREAS, LESSEE desires to lease DISTRICT'S property for the terms and conditions set forth in this Lease;

NOW THEREFORE in consideration of the covenants and conditions set forth herein, DISTRICT and LESSEE agree as follows:

ARTICLE 1. DESCRIPTION AND ACCEPTANCE OF PREMISES

A. Description

DISTRICT by and through its Board of Supervisors, leases to LESSEE, and LESSEE leases and hires from DISTRICT, that property described in Exhibit "A" attached hereto located on the east bank of the Santa Anita Wash between Huntington Drive and Santa Clara Street in the City of Arcadia, County of Los Angeles, State of California, hereinafter "Premises".

B. Acceptance

LESSEE accepts the Premises in the condition existing as of the date this Lease is executed, except as otherwise provided herein, subject to all matters of record.

ARTICLE 2. USE

A. Description

Lessee has the right to construct, reconstruct, maintain the Premises for vehicular parking, provided that the construction shall not be done or commenced until the plans and specifications for such construction or reconstruction shall have first been submitted to and been approved in writing by the Chief Engineer of the DISTRICT.

LESSEE acknowledges that neither DISTRICT nor DISTRICT's agent has made any representation or warranty as to the present or future suitability of the Premises for LESSEE's proposed use or the conduct of LESSEE's business.

B. Interference with flood control

LESSEE agrees that its use of the Premises shall not adversely affect DISTRICT's flood control facilities and/or operations. If DISTRICT determines, in its sole discretion, that the use of the Premises adversely affects flood control or if such use has not been approved in accordance with the provisions of this Lease, LESSEE shall, upon receipt of notice thereof from DISTRICT, immediately cease such use. LESSEE shall bear any expenses associated with the cessation of such use, and shall have no rights or claims therefore against DISTRICT.

ARTICLE 3. LEASE TERM

This Lease shall consist of Term A and Term B together referred to as the Lease Term. The Lease Term shall be effective for a period of fifteen (15) years beginning upon execution by the District's Board of Supervisors, also referred to as the Effective Date.

A. Term A

- (1) Term A shall commence upon the Effective Date and shall remain effective for a period of sixty (60) days. During Term A, LESSEE shall conduct a site assessment, as stipulated in Article 5 herein.
- (2) The day and month on which Term A commences shall be the Anniversary Date for the purposes of paying and calculating rent.
- (3) Should LESSEE desire to enter the Premises during Term A, LESSEE shall be required to apply for and have obtained a temporary access permit to be issued by the Los Angeles County Department of Public Works' Construction Division, Permits and Subdivisions Unit. LESSEE shall meet all conditions of said permit, including requirements for insurance therein.

B. Term B

- (1) Term B may commence on or before the sixty first (61st) day following the Effective Date. Tenant shall give DISTRICT written notice of a sooner commencement of Term B. Such written notice shall state that either LESSEE has satisfied the requirements of Article 5, or has waived said requirements pursuant to Article 5.
- (2) The First Year's Rent, as stipulated in Article 4 A. below, will be due and payable prior to the commencement of Term B.

C. Option to Extend

LESSEE shall have one five (5) year option to extend this Lease. Said option may be exercised by LESSEE to DISTRICT in writing no later than one hundred eighty (180) days prior to the end of the fifteenth year.

D. Cancellation

DISTRICT shall have the right to cancel this Lease for the flood control ,water conservation and watershed management purposes by giving LESSEE at least one hundred eighty (180) days prior written notice.

ARTICLE 4. RENT

Rent is due annually and payable on each Anniversary Date to:

Los Angeles Flood Control District
c/o Los Angeles Department of Public Works
P.O. Box 1460
Alhambra, California 91802-1460
Attention: Fiscal Division.

All payments shall state the name of LESSEE and Lease Number.

A. First Year Rent

LESSEE shall pay DISTRICT as initial annual rent for the Leased Premises an amount of ELEVEN THOUSAND TWO HUNDRED SIXTY DOLLARS (\$11,200).

B. Rent Adjustment Based on Consumer Price Index For All Urban Consumers- (CPI-U)

Except for years affected by the reappraisal as specified in Subsection C below, every Anniversary Date that this Lease is in full force and effect, the rent for the current 12-month period (Current Rent) shall be adjusted by the Consumer Price Index for All Urban Consumers (base year 1982-84=100) for the Los Angeles - Riverside - Orange County, California area, published by the United States Department of Labor, Bureau of Labor Statistics ("Index") as follows:

$$\text{Current Rent} \times \text{Current Index} \div \text{Previous Index} = \text{New Rent}$$

The Current Rent shall be adjusted by that percentage increase reported in the Index for that twelve (12) month period taken ninety (90) days prior to the Anniversary Date. The Current Rent plus the product of the Current Rent and the Index percentage is the amount payable to DISTRICT. The New Rent shall never be adjusted to an amount less than the Current Rent.

If the described Index is no longer published, another Index generally recognized as authoritative shall be substituted as selected by the Chief Officer of the Bureau of Labor Statistics or its successor. If no such government index or computation is offered as a replacement, the DISTRICT and LESSEE shall mutually select a percentage for calculating future annual adjustments.

C. Rent Adjustment Based Upon Appraised Land Value

Every fifth Anniversary Date of this Lease, the rent shall be adjusted based on an appraisal of the Premises made or caused to be made by DISTRICT. DISTRICT shall notify LESSEE in writing thirty (30) days prior to the effective date of the rent adjustment.

If the effective date set forth in the foregoing notice is later than the Anniversary Date, and LESSEE has paid the annual rent due as of the Anniversary Date, then LESSEE shall pay DISTRICT a prorated portion of the new rent for the unexpired portion of the current lease year after the effective date of the adjustment.

D. Late Payment

- (1) Any Rent payable under the Lease by LESSEE to DISTRICT and not paid within ten (10) days of due date shall be delinquent and subject to interest charged from the date payment is due at the rate of ten percent (10%) per annum. Interest shall be charged on the unpaid balance plus accrued interest, until such time that the amount fully owed is received by DISTRICT. The interest rate shall not exceed the then existing legal limit in California.
- (2) If it becomes necessary to bring suit for collection of Rent, or of any other sums herein stipulated to be paid, and DISTRICT is successful in any such suit(s), LESSEE agrees to pay attorney's fees and any other collection fees as DISTRICT may reasonably incur.

E. Net Lease

Unless stated otherwise herein, it is the purpose and intent of DISTRICT and LESSEE under this Lease that all rent paid by LESSEE to DISTRICT shall be absolutely net to DISTRICT. All costs, expenses, and obligations of all and every kind relating to the use, occupancy, and maintenance of the Premises by LESSEE which may be incurred and become due during or subsequent to the Lease Term, shall be paid by LESSEE.

F. Proration

In the event of cancellation or early termination of this Lease other than on an Anniversary Date, prepaid rent shall be pro-rated to reflect the actual date of tenancy, subject to DISTRICT inspection of the Premises.

ARTICLE 5. SITE ASSESSMENT

It is the intent of this Article to provide for testing and study of the Premises physical condition. This Article is not intended for the provision of due diligence review for financial feasibility and/or entitlements. All such tests, and studies shall be undertaken at the sole cost and expense of the LESSEE.

A. Access

LESSEE may, subject to the conditions specified in Article 3.A.(3) and Sub-Article B below, enter the Premises to conduct or to have conducted site assessment tests and studies as LESSEE deems necessary and as DISTRICT requires to satisfy contingencies stated in this Article.

B. Testing

- (1) LESSEE shall perform or cause to be performed a **Phase I Site Assessment**, a non-invasive site investigation, in accordance with "E1527-97 Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site

Assessment Process" as published October 10, 1996 by the American Society for Testing and Materials.

Any documents prepared as part of the Phase 1 site Assessment shall be delivered to DISTRICT by LESSEE immediately upon LESSEE's receipt thereof, and shall thereafter become the property of DISTRICT.

- (2) LESSEE shall perform or cause to be performed a **Phase 2 Soils Study**, which shall include without limitation the following:

- preliminary surface and subsurface soil and groundwater sampling
- geophysical survey
- soil gas survey
- atmospheric sampling
- industrial hygiene and safety review
- identification of contamination and its sources
- recommend methods for remediation of contamination, if any
- estimated cost, if any, for remediation

Any documents prepared as part of the Phase 2 soils study shall be delivered to DISTRICT by LESSEE immediately upon LESSEE's receipt thereof and shall therefore become the property of DISTRICT.

Contractor(s) selected by LESSEE shall have prior experience performing studies of this type and shall be approved by DISTRICT in writing prior to the letting of such contracts.

- (3) LESSEE shall not sample on or below the surface of the Premises until first allowing DISTRICT to inspect the Premises. LESSEE shall then secure a permit, in accordance with Article 3.A.(3), issued by DISTRICT to allow such actions.

C. Requirements and Remediation

- (1) LESSEE shall have sixty (60) days from the Effective Date to arrange for and complete all such actions to satisfy the site assessment requirement.
- (2) The scope of services and any persons or firms conducting any aspect of the site assessment shall be subject to prior written approval by DISTRICT. Any firms conducting such tests will have prior experience.
- (3) DISTRICT, in its sole discretion, may demand remediation of any and/or all contamination conditions found on, above or below the site. Such remediation shall be made at LESSEE'S sole cost and expense. LESSEE shall hold DISTRICT harmless and indemnify and defend DISTRICT against any and all claims and costs arising from any prior use of the Premises.

- (4) LESSEE shall notify DISTRICT in writing by the sixty first (61st) day after the Effective Date of the satisfaction or non-satisfaction or waiver of any and all contingencies or conditions set forth in this Article.
- a. If LESSEE fails to notify DISTRICT within the aforesaid sixty (60) day period, then it will be deemed that the LESSEE has waived the requirements set forth herein, and assumes the property is free of contamination, and the Lease shall continue in full force and effect.
 - b. Should remediation, as agreed to by the parties, continue beyond Term A, the parties may mutually agree to extend the site assessment period to no more than ninety (90) days following the Effective Date; the Lease shall continue upon the completion of said remediation. If extended to ninety (90) days then reference in Article 5.C(5) to sixty (60) days shall be amended to read ninety (90) days.
- (5) LESSEE may cancel the Lease only if, after completing the required site assessment within the sixty (60) day time period, the tests reveal that the site is contaminated and requires remediation. LESSEE shall notify DISTRICT in writing within the sixty days (60) of Term A of such determination and this Lease shall be canceled. LESSEE shall restore Premises to the condition found on the Effective Date at LESSEE'S sole cost and expense.
- a. If the Lease is canceled, LESSEE shall continue to indemnify DISTRICT for conditions resulting from tests and studies conducted to satisfy its due diligence as stated in this Article.
 - b. Should the cost of repair of said damages exceed the amount of the security deposit, DISTRICT may impose repair requirements and terms stipulated in Article 11 herein.

ARTICLE 6. SECURITY DEPOSIT

A. Amount and Acceptable Forms of Security Deposit

- (1) LESSEE shall provide DISTRICT, prior to the Effective Date, a security deposit which shall at all times thereafter be maintained by LESSEE. The initial amount equal to the first year's rent.
- (2) If DISTRICT deems at any time that said amount is insufficient, in view of inflation and other factors, DISTRICT shall set a new amount that will provide DISTRICT with the same level of protection to the DISTRICT stated in Article 6.A(1) above, but at no time will that amount be less than the initial security deposit.
- (3) The security deposit shall guarantee LESSEE's full and faithful performance of all the terms, covenants, and conditions of this Lease.

- (4) The security deposit shall be in the form of a cashier's check payable to the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT.
 - a. The security deposit shall be delivered to the DISTRICT prior to the execution of this Lease by LESSEE.
 - b. Any interest earned on the Security Deposit shall be reinvested and accumulated. The tax liability on the interest earned shall be reported to the Internal Revenue Service using the taxpayer identification number of the LESSEE.
- (5) LESSEE may not change the form of security deposit. DISTRICT, at its sole discretion, may change the form of security deposit at any time during the Lease Term by notifying LESSEE in writing as to the amount, the new form and the date upon which the new security deposit is due to DISTRICT.

B. Availability and Uses of Security Deposit

- (1) All or any portion of the security deposit shall be available unconditionally to DISTRICT to correct any default or breach of this Lease by LESSEE, its successors or assigns, or for payment of expenses incurred by DISTRICT as a result of the failure of LESSEE, its successors or assigns, to faithfully perform any of the terms, covenants, and conditions of this Lease.
- (2) If at any time during the term of this Lease, any rent or any other sum payable to DISTRICT shall be overdue and unpaid, DISTRICT may, at DISTRICT's option, apply that portion of the security deposit to the payment of any overdue rent or any other sums due and payable to DISTRICT under this Lease.
- (3) Should the entire security deposit or any portion thereof, be appropriated and applied by DISTRICT for the payment of overdue rent or any such other sum due and payable to DISTRICT by LESSEE, then LESSEE shall within thirty (30) days after written demand by DISTRICT, restore said security deposit to the required amount.
- (4) LESSEE shall maintain the required security deposit throughout the Lease Term. Failure to maintain the proper amount of security deposit shall be deemed a default and may, at DISTRICT'S sole discretion, be grounds for termination of this Lease.
- (5) The security deposit shall be rebated, reassigned, released, or endorsed to LESSEE, as applicable, at the end of the Lease Term, provided LESSEE is not then in default and has performed its obligations as required upon termination of this Lease.

ARTICLE 7. FLOOD CONTROL, WATERSHED MANAGEMENT AND WATER CONSERVATION PRIORITY

Use of the Premises by LESSEE for those purposes so stated in Article 2 herein shall be subordinate to DISTRICT's use thereof for present and future flood control, watershed management and/or water conservation purposes as determined by the DISTRICT and shall not interfere or conflict with DISTRICT's use.

A. Priority of Premises

- (1) It is understood by the parties hereto that since construction projects of DISTRICT and others authorized by DISTRICT may be carried on within the Premises, LESSEE, its officers, agents, employees and its contractors, permittees, licensees and their employees shall not unreasonably hinder or delay any of them or their actions.
- (2) DISTRICT may, when necessary, request LESSEE in writing to make required modifications, additions, relocation or removal of LESSEE's facility due to DISTRICT's work for flood control, watershed management and/or water conservation purposes, when in the sole discretion of DISTRICT, such work cannot be accommodated practically or economically with LESSEE's existing improvements. LESSEE shall be obligated to make such modifications, additions, relocation or removal upon its receipt of notice thereof, shall perform such obligations at its expense and shall complete them prior to commencement of DISTRICT's work.
 - a. Should LESSEE fail to make said modifications, additions, relocation or removal within one hundred twenty (120) days from receipt of notice from DISTRICT, DISTRICT may perform the required work itself or engage an independent contractor and charge LESSEE for any and all expenses incurred.
 - b. LESSEE shall reimburse DISTRICT for any and all costs DISTRICT incurred in making said modifications, additions, relocation or removal together with interest calculated in conformance with Article 4.D.(1).

At its sole discretion, DISTRICT may use the security deposit for such payment. In such case, LESSEE shall restore the security deposit in accordance with Article 6.B.(3).

ARTICLE 8. CONSTRUCTION AND ALTERATION

A. LESSEE's Right to Construct and Alter

- (1) LESSEE has the right to construct (or cause to be constructed) the improvements necessary for parking purposes on the Premises. All improvements now or hereafter constructed or located on the Premises shall be the property of LESSEE. Upon the expiration or sooner termination of this Lease (unless upon such termination a new lease is executed) said

improvements shall become the property of DISTRICT. The costs of all permits, licenses, and other costs of any nature in connection with the construction of the improvements and the use of the surface of the Premises shall be borne by LESSEE, and LESSEE indemnifies and holds DISTRICT and the Premises harmless in connection therewith.

- (2) The construction, reconstruction, alteration, remodeling, or removal of any improvements shall not commence until LESSEE's preliminary and final plans and specifications thereto have been submitted to and approved by DISTRICT's Chief Engineer or designee, and are in accordance with the terms and conditions of this Lease. In accordance with Article 8.C., LESSEE shall obtain and bear costs of permits for such work.

Routine maintenance, including graffiti removal, which does not include any penetration of the soil's surface and/or any construction, reconstruction, alteration or removal of any improvements is exempt from the requirements of Articles 8.A.(2) and 8.C.

- (3) It is understood by LESSEE that such approval by DISTRICT does not imply, confer or constitute any entitlement as to what is permitted and may be constructed on the Premises. Such entitlement(s) must be obtained by the LESSEE from the jurisdiction in which the Premises are located.
- (4) Such written approval for construction, reconstruction, remodeling, or alteration, with the exception of removal, shall not be unreasonably withheld unless DISTRICT, at its sole discretion, determines that the proposed construction, reconstruction, remodeling, or alteration, will interfere with the operation and maintenance of said DISTRICT facility or any of DISTRICT's other affected properties or facilities or the placement of underground utilities.
- (5) LESSEE shall submit, to DISTRICT, "As Built" Construction Drawings within thirty (30) days from Notice of Completion as executed by the Head, Permits and Subdivision Section, Construction Division of the Los Angeles County Department of Public Works. Failure to submit "As Built" Construction Drawings", as required herein, shall constitute a breach of this Lease. The sum of One Thousand Dollars (\$1,000) is hereby agreed upon as the amount of damages that will be assessed to LESSEE and paid to DISTRICT for each business day, following the fifth business day of such breach. Said amount has been agreed to by both parties in recognition of the difficulty in finding actual damages arising from a breach hereof.

DISTRICT's initials ____ LESSEE's initials ____

- (6) LESSEE, when undertaking any construction, reconstruction, remodeling, or alteration, except for minor repairs as defined herein, shall procure payment and performance bonds as specified in Article 10.

B. Approval by DISTRICT As to Compatibility

Approval by DISTRICT of plans and specifications submitted by LESSEE shall be as to compatibility with DISTRICT's facilities and shall not be interpreted or inferred as an endorsement or approval as to the design, accuracy, correctness, or authenticity of the information shown thereon. LESSEE shall comply with all requirements, rules, regulations, and ordinances pertaining to the construction of LESSEE's improvement on the Premises.

C. Responsibility of LESSEE to Obtain Permits

LESSEE shall arrange for, obtain and bear costs of all permits, including plan check and inspection fees, licenses, environmental impact reports, site preparation, surface treatment, relocation of any facilities, and enclosure of the Premises as necessary or required for health or safety in the construction, operation, and maintenance of the Premises as used by LESSEE.

D. Incorporation of Permit by Reference

As a condition of this Lease, LESSEE agrees to perform the covenants and conditions contained in any permit issued or to be issued to LESSEE by DISTRICT's Chief Engineer or his designees. In the event of any inconsistencies or ambiguities between the terms of the Lease and any permit issued, the Lease shall prevail.

E. Loading and Materials Stockpiling Limitations

(1) LESSEE by this Article is aware that the use of heavy equipment in excess of H-10 highway loading, as specified in the Standard Specifications for Highway Bridges of the American Association of State Highway Officials (Tenth Edition), or the stockpiling of materials on land within or adjoining DISTRICT facilities may damage such facilities by excessive loading or surcharge.

(2) LESSEE agrees that no entry, use of heavy equipment or materials stockpiling on or adjacent to DISTRICT's property will be made by LESSEE without the proposed use having been requested and submitted in writing by certified mail to DISTRICT and only upon DISTRICT's written approval.

Failure of DISTRICT to respond within thirty (30) days of receipt of the notice for the proposed use shall be deemed as disapproval.

ARTICLE 9. OWNERSHIP AND DISPOSITION OF IMPROVEMENTS

A. Ownership

(1) The improvements and equipment constructed or installed on the Premises by LESSEE or acquired by LESSEE during the Lease Term, as approved by this Lease, shall remain LESSEE's property during the Lease Term.

(2) During the Lease Term all of LESSEE's improvements shall constitute additional security for the performance of LESSEE's obligations hereunder.

B. Termination and Removal

- (1) LESSEE shall remove all of its improvements on the Premises prior to the Lease expiring or terminating. LESSEE's facility and improvements shall be removed to DISTRICT's satisfaction and at LESSEE's sole cost and expense.
- (2) In compliance with this provision for removal of all LESSEE'S improvements on the Premises, LESSEE shall procure estimates of the total cost for such removal from three licensed professionals and provide DISTRICT with copies thereof. The licensed professional to be contracted must be approved in writing by DISTRICT prior to commencement of removal.
- (3) Within thirty (30) days prior to the expiration or sooner termination of this Lease, as security for compliance, LESSEE shall furnish a corporate surety Performance Bond, as provided in Article 10 .
- (4) Within thirty (30) days prior to commencement of said removal, LESSEE shall furnish a corporate surety Payment Bond (for materials and labor), as provided in Article 10 .
- (5) In the event that LESSEE employs a licensed contractor for the removal and obtains from said contractor(s) similar bond(s), LESSEE shall adhere to the provisions in Article 10 .
- (6) Should LESSEE itself remove the improvements, LESSEE shall procure and submit to DISTRICT a letter of credit, as provided in Article 10 .
- (7) The actual cost of removal and any restoration of the Premises required shall be paid by LESSEE.

C. Termination and Rendering Inoperable

- (1) LESSEE shall notify DISTRICT no more than twelve (12) months but not less than six (6) months prior to the Lease expiration date, or upon sooner termination of this Lease, if LESSEE elects to leave all or a portion of the improvements within the Premises.
- (2) Should DISTRICT, at its sole discretion, decide that LESSEE should not remove all or a part of the improvements, DISTRICT shall notify LESSEE in writing that it may leave the improvement as is.

D. Testing and Remediation to Perform at Lease Termination

- (1) LESSEE shall perform or have performed, at its sole cost and expense, a Phase 2 Soils study as described in Article 5., between six (6) and twelve (12) months prior to the termination date of this Lease.
- (2) Should said test(s) disclose any soil contamination on the Premises not present upon commencement of Term B, regardless of the source, LESSEE at its sole cost and expense, shall remediate all contamination to DISTRICT's satisfaction

and restore soil to its condition found as of the Commencement of Term B.

- (3) Should LESSEE fail to perform such remediation and restoration as specified herein, DISTRICT may perform said actions as needed. LESSEE shall be charged for all such costs, together with interest calculated in conformance with Article 4.D until such time that the sum owed is received in full by DISTRICT.

ARTICLE 10. SURETY BONDS

A. Performance and Payment Bonds

- (1) On each occasion LESSEE constructs, reconstructs or removes any approved improvement within Premises, except for minor repairs as defined in Article 36, LESSEE shall at its own cost and expense furnish DISTRICT two (2) separate corporate surety bonds, in all respects satisfactory to DISTRICT as follows:

Performance Bond: Within thirty (30) days prior to commencement of any construction, reconstruction or removal, LESSEE shall furnish a corporate surety Performance Bond issued by a surety company licensed to transact business in the State of California, in an amount equal to one hundred fifteen percent (115%) of the contract price of such construction, reconstruction or removal. Said bond and said company shall be in all respects satisfactory to DISTRICT, naming LESSEE as principal, said company as surety, and DISTRICT as obligee, to assure full and satisfactory performance by LESSEE of its construction, reconstruction or removal of said improvements.

Payment Bond: Within thirty (30) days prior to commencement of any construction, reconstruction or removal hereunder, LESSEE shall furnish a corporate surety Payment Bond (Material and Labor Bond), issued by a surety company licensed to transact business in the State of California, with LESSEE as principal, said company as surety, and DISTRICT as obligee. Payment Bond shall be issued in a sum equal to one hundred fifteen percent (115%) of the aforesaid contract price of such construction, reconstruction, or removal guaranteeing payment for all material, provisions, supplies and equipment, used in, upon, for or about the performance of said construction work and for labor done thereon of any kind whatsoever and protecting DISTRICT from any and all liability, loss or damages arising from failure to make such payment.

- (2) Should LESSEE not complete any or all the work connected with construction, reconstruction or removal of its improvements on the Premises, then the bond(s) shall be used by DISTRICT for any and all such costs and payments. That amount in excess of one hundred percent (100%) of contract price shall release to the DISTRICT to cover total costs incurred in its performance of any and all actions under this Article.

B. Alternatives To Surety Bonds

- (1) In the event LESSEE constructs or removes certain improvements by itself, DISTRICT and LESSEE agree that a letter of credit in the same amounts as required by Article 10.A, in a form acceptable to DISTRICT from an accredited lending institution, approved by DISTRICT, shall be submitted to DISTRICT, guaranteeing that funds necessary to accomplish said construction or removal shall be irrevocably set aside for the sole purpose of completing said construction or removal without the right of offset by such institution for other debts. Such letter of credit shall be renewed to provide for continuing liability in the above amount notwithstanding any payment or recovery.
- (2) In the event that LESSEE employs a licensed contractor for the construction or removal of improvements and obtains from said contractor(s) similar bond(s) in a like amount, LESSEE shall insure bond(s) in all respects are satisfactory to DISTRICT, upon application by LESSEE and upon the naming of DISTRICT as an additional obligee under such bond or bonds, DISTRICT will accept said contractor's bond in lieu of the bonds otherwise required by this Article. Such bond shall be renewed to provide for continuing liability in the above amount notwithstanding any payment or recovery.
- (3) At its sole option, the DISTRICT may accept Certificates of Deposit, Cash Deposit, U.S. Government Securities or other instruments acceptable to DISTRICT in lieu of corporate surety bonds to meet the requirements of this Article. Such alternate instruments shall be made payable to the Los Angeles County Flood Control District and shall be deposited with DISTRICT.

DISTRICT shall accept such alternative bond instruments only from institutions on the then current List of Approved Lenders maintained by the Los Angeles County Treasurer and Tax Collector. At any time during the Lease Term should the institution from which the instrument was procured, be removed from the List or otherwise disqualified by the County, then LESSEE must procure at its sole cost another such instrument, of equivalent value and standing, from an institution on the then current List upon written notice by DISTRICT.

- (4) Failure of LESSEE to comply with the above provision will result in a demand for corporate surety bonds as required under this Article.

ARTICLE 11. REPAIRS AND MAINTENANCE

A. LESSEE Responsible for Repairs and Maintenance

- (1) LESSEE, at its sole cost and expense, shall maintain the Premises, including but not limited to, all facilities, structures, landscaping and improvements constructed thereon by LESSEE, in good repair and in compliance with all requirements of law and usual industry standards.

- (2) LESSEE shall take all steps necessary to protect all DISTRICT owned improvements and property from damage and to prevent any interference with the flow of water in the adjoining channel incident to LESSEE's use of the Premises, all without expense to DISTRICT. LESSEE shall be liable for damage to all DISTRICT owned improvements and property resulting from or attributable to the use and occupancy of Premises by LESSEE or any person entering thereon with or without the consent of LESSEE, expressed or implied.
- (3) LESSEE shall repair or remove any and all damage that LESSEE has made or caused to its own improvements or DISTRICT owned improvements and property , at no cost to DISTRICT. At DISTRICT'S sole discretion, and at LESSEE's sole cost and expense, LESSEE shall repair and/or remove any and all DISTRICT owned improvements and property which are damaged by LESSEE. Should damages be caused by the presence of hazardous substances, LESSEE shall take remedial actions as specified herein Article 23.
- a. LESSEE shall immediately remove from and keep structures and improvements on the Premises, whether LESSEE or DISTRICT owned, free of any graffiti.
 - b. LESSEE shall evidence such repairs or removal within seven (7) days of the incident causing the damage. Prior to LESSEE's repair or removal of said damage, LESSEE shall notify DISTRICT in writing. Where DISTRICT owned improvements are affected, LESSEE shall obtain DISTRICT's approval.
 - c. If LESSEE fails to repair said damages or remove damaged structures immediately and to DISTRICT's satisfaction, DISTRICT may enter Premises with or without notice and repair said damage, or at DISTRICT's option, may terminate the Lease.
 - d. Should DISTRICT repair or remove said damages, LESSEE shall reimburse DISTRICT for any and all expenses incurred, together with interest calculated in conformance with Article 4.D.
- (4) LESSEE shall otherwise observe and comply with any and all public laws, ordinances and regulations, applying to Premises during the term of this Lease.
- (5) Notwithstanding the above, DISTRICT shall not be obligated to make any repairs, alterations, additions or improvements in, on or to Premises or in, on or to any structure or other improvements hereinafter erected or installed thereon by LESSEE, whether structural or nonstructural, ordinary or extraordinary, foreseen or unforeseen.

B. Emergency Conditions

In the event of an emergency, LESSEE shall take all steps necessary to abate the condition. Emergency conditions are defined as situations in which lives are endangered or material or substantial environmental damage will result if required work is delayed pending approval by DISTRICT. LESSEE agrees that if work is done under "emergency conditions", LESSEE shall within seven (7) days from the occurrence of the emergency, request approval in writing from DISTRICT for the work performed as required herein.

C. Approvals by DISTRICT

- (1) For all repairs, LESSEE shall comply with each and every condition for Article 8. , except for repairs to the interior of structures and for minor repairs as defined in Article 36. , which shall conform with local building codes.
- (2) DISTRICT's Chief Engineer or designee may release LESSEE from any such condition only upon prior written Request for Release from Construction Conditions setting forth each and every condition from which LESSEE seeks release.

ARTICLE 12. TAXES AND ASSESSMENTS

A. Payment of Taxes

- (1) LESSEE shall have sole responsibility to pay promptly without abatement, deduction, or offset, any personal and real property taxes, rental and excise taxes, business and occupation taxes and all general and special assessments, taxes or any other charges (hereinafter "taxes") levied or assessed upon the Premises, LESSEE's operations thereon or against LESSEE's possessory interest by any governmental entity.
- (2) Should this Lease create a possessory interest which may be subject to a property tax levy, LESSEE agrees to pay any property tax levied on such interest.
- (3) If notice of such taxes is received by DISTRICT from a governmental agency or any other persons or entity, DISTRICT shall communicate such notice to LESSEE; however, DISTRICT's failure to communicate such notice shall not impose liability on DISTRICT or excuse LESSEE from payment of the taxes.

B. Fees

In the event that during the Lease Term taxes are placed upon DISTRICT by any governmental agency whether, city, state, federal or special district, as a part of a requirement to obtain a license or pay a sum for the renting or leasing of real property or any interest therein, measured in whole or in part upon the sums received by DISTRICT from LESSEE under this Lease, LESSEE shall either pay directly on behalf of DISTRICT or at DISTRICT's request, reimburse DISTRICT for any sums paid by DISTRICT.

C. Payment by DISTRICT

- (1) In the event LESSEE fails to pay such taxes within fifteen (15) days after the due date, DISTRICT may, at its option, pay any and all such sums together with all penalties and interest added thereto by reason of any such delinquency or default, and may likewise redeem the Premises or any part thereof, from any tax sale or sales.
- (2) Any such amounts so paid by DISTRICT shall be subject to interest calculated in conformance with Article 4.D, until such time that the amount fully owed is received by DISTRICT.

D. Commencement and Expiration

All taxes and assessments against Premises during the first and last years of this Lease shall be pro-rated between DISTRICT and LESSEE. LESSEE shall have no obligation for payment of installments of taxes on assessments that become due before the commencement of Term A of the Lease or that may be assessed after the expiration or sooner termination of the Lease term.

ARTICLE 13. LIENS AND CLAIMS

- (1) LESSEE agrees to keep the Premises and the improvement(s) hereinafter constructed or placed thereon, and every part hereof, and any and every estate, right, title, and interest therein, at all times during the term of this Lease, free and clear of mechanic's liens and other liens for labor, service, supplies, equipment and materials.
- (2) LESSEE will at all times fully pay and discharge and wholly protect, defend and hold harmless DISTRICT and all and every part of the estate, right, title, and interest of DISTRICT in and to all and every part of the Premises and such improvements, or any of them, against; (a) any and all demands or claims which may or could become such liens or labor claims, (b) all attorney's fees and costs, and; (c) any and all expenses, damages, or outlays which may or might be incurred by DISTRICT or LESSEE by reason of, or on account of any such liens or claims or the assertion thereof.
- (3) If any lien shall be filed, or if any suit, action or proceeding shall be commenced, affecting the Premises or improvements thereon, LESSEE shall immediately, upon obtaining information thereof, give notice in writing to DISTRICT.
- (4) Should LESSEE allow a final judgment of foreclosure of any mechanic's lien, or any other judgment arising out of any claim or demand in connection with any construction or improvements made upon the Premises to remain unsatisfied for more than a period of ten (10) days, DISTRICT may, at its option, pay any and all such claims or demands. LESSEE covenants and agrees to pay to DISTRICT all such sums incurred or expended by DISTRICT, including all reasonable attorney's fees, with annual interest calculated in conformance with Article 4.D.

- (5) DISTRICT shall have the right to post, record, and maintain on the Premises such Notices of Nonresponsibility as provided for under the laws of the State of California.
- (6) Notwithstanding anything to the contrary herein contained, if LESSEE shall contest the validity of any lien, claim or demand, then LESSEE shall, at its expense, defend itself and DISTRICT against the same and shall pay and satisfy any final adverse judgment that may be rendered therein before enforcement thereof against DISTRICT or the Premises.
- (7) LESSEE shall name DISTRICT as additional obligee under any surety bond furnished in the contested proceedings.

ARTICLE 14. INDEMNITY AND INSURANCE

A. Indemnity

- (1) LESSEE agrees to indemnify, defend and hold harmless DISTRICT, its governing board, officers, employees, engineers, contractors, or agents against any claims of any nature whatsoever, arising from or in connection to the construction, reconstruction, maintenance, operation or removal of any improvements constructed or maintained by LESSEE on, above or under the Premises or use of the Premises by LESSEE.
- (2) DISTRICT shall not be liable for any loss occurring to the operation of the Premises; any injury, loss, death to any person whomsoever; any damage or destruction to the Premises, at any time, occasioned by or arising out of, indirectly, solely, or contributorily by: (a) any act, activity or omission of LESSEE or anyone holding under LESSEE, or; (b) the occupancy or use of the Premises or any party thereof, by or under LESSEE, or; (c) any state or condition of the Premises or any part thereof.
- (3) LESSEE releases DISTRICT and waives all right to damages for any loss, costs, or expenses LESSEE may sustain as a result of damage to or destruction of LESSEE's facilities attributable to DISTRICT's flood control or water conservation function or flooding caused by inadequacy or failure of DISTRICT's facilities.

B. Insurance

As of the Effective Date of this Lease and during the entire Lease Term, LESSEE shall pay all premiums required to maintain and keep in force insurance coverage herein, with insurance carrier(s) acceptable to DISTRICT.

- (1) Comprehensive General Liability Insurance. LESSEE shall procure such policy with coverage of not less than five million dollars (\$5,000,000) combined single limit for third party liability. Liability coverage shall also include automobile liability coverage.

- (2) Other Insurance Requirements:
- a. LESSEE shall name the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT and the COUNTY OF LOS ANGELES, its governing Board, officer's, and employees as additional insured on each and every policy of insurance procured by LESSEE as required herein.
 - b. LESSEE shall deliver to DISTRICT, within ten (10) days prior to the Effective Date, copies of all actual insurance policies procured by LESSEE required hereof.
 - c. LESSEE shall furnish DISTRICT, thirty (30) days prior to each anniversary of the Effective Date, Certificates of all insurance policies required herein, as proof that they are in full force and effect, and the limits thereof.
 - d. LESSEE shall pay any and all premiums or other expenses arising in connection with the furnishing of the insurance.
 - e. All insurance policies shall contain a provision that said policies shall not be canceled or terminated without thirty (30) days prior written notice from the insurance company to DISTRICT. On or before ten (10) days prior to the expiration of any insurance policy, LESSEE will deliver to DISTRICT either written notice in the form of a receipt or other similar document from the applicable insurance company that said policy or policies have been renewed, or a copy of a new insurance policy from another responsible and solvent insurance company acceptable to DISTRICT for such coverage.
 - f. LESSEE shall procure an appropriate clause or an endorsement on any policy of fire, lightning, vandalism, malicious mischief, or extended coverage insurance covering the Premises, the improvement(s) and any personal property, fixtures and equipment located in or on the Premises, pursuant to which the insurance companies waive subrogation or consent to a waiver of right of recovery against DISTRICT. LESSEE does hereby agree that it shall not make any claim against or seek to recover from DISTRICT any loss or damage to LESSEE's property or the property of others, resulting from and covered by fire or other hazards insurance.
 - g. Any loss shall be payable by LESSEE notwithstanding any act or negligence of DISTRICT, its officers, agents and employees that may otherwise result in a forfeiture of the insurance.
 - h. The policies required herein are primary and non-contributing with any insurance that may be carried by DISTRICT.

- i. LESSEE shall, at all times prior to a loss thereon, be entitled to surrender any insurance policy or policies of fire or extended coverage insurance and to receive the allowable rebate of unearned premiums thereon; however, the LESSEE first shall substitute an acceptable policy(s) for an equal amount of coverage.
 - j. At any time during the Lease Term, should DISTRICT require any other certain types of insurance policies, LESSEE shall conform with DISTRICT's requirements.
- (3) Use of Funds for Repair and Restoration
DISTRICT shall, at LESSEE's sole cost and expense, cooperate fully with LESSEE to obtain the largest possible recovery following any damage or loss due to an incident covered by insurance. All policies of fire and extended coverage insurance required by this Lease shall provide that the proceeds shall be held in trust by the Insurance Trustee, as provided for in Article 14.B.(4) below for the uses and purposes prescribed by this Lease. All costs and charges by the Insurance Trustee to discharge related duties shall be borne and paid by LESSEE.
- (4) Insurance Trustee
 - a. Prior to the commencement of this Lease, LESSEE shall designate an Insurance Trustee, as defined in Article 36. DEFINITIONS. In the absence of a designation by LESSEE or approval by DISTRICT, the Los Angeles County Flood Control District Chief Engineer or designee shall serve as the Insurance Trustee.
 - b. In the case of loss or damage to the Premises, all proceeds payable pursuant to the provision of any insurance policy or policies of fire insurance or extended coverage shall be expressly made payable to the Insurance Trustee for DISTRICT and LESSEE. Insurance Trustee shall disperse proceeds as follows:
 - 1. If the proceeds do not exceed the amount defined in Article 36. as minor repairs, such proceeds shall be paid to LESSEE and shall be applied by LESSEE for the repair, restoration, or reconstruction of any improvement damaged or destroyed by casualty giving rise to the insurance claim.
 - 2. All proceeds received by the Insurance Trustee from any insurance policies of fire insurance or extended coverage shall first be used, subject to any other conditions contained in this Lease, by such Insurance Trustee to fund the restoration and repair of the improvements and equipment located on the Premises which have been destroyed or damaged.
 - 3. Such proceeds shall be paid out by the Insurance Trustee to persons furnishing labor or materials, or both, including architect

fees and contractors compensation for the construction work, based on vouchers or invoices approved by a licensed architect or engineer contracted by LESSEE to superintend the work. However, if the Insurance Trustee shall reasonably determine that such vouchers or invoices are improperly approved by such architect or engineer, or if no such architect or engineer is contracted, then the Insurance Trustee shall have the right to choose such contractors to supervise the construction work and to make the payments out of the insurance trust fund for their reasonable expenses or charges.

4. Any proceeds not disbursed by the Insurance Trustee, as provided above, and which remains in the Insurance Trust fund after the completion of and payment for the restoration or repair work, shall within thirty (30) days after written demand made by LESSEE or DISTRICT upon the Insurance Trustee and accompanied by reasonable proof of such completion and payment, be distributed to LESSEE and DISTRICT in proportion to their respective financial interest in the Premises, as shall be determined solely by DISTRICT. If LESSEE does not complete the restoration or repair work, the remaining proceeds will not be disbursed to the LESSEE.
 5. If the insurance proceeds are insufficient to pay the actual cost of reconstruction, repair, or rehabilitation, Insurance Trustee shall request such deficiency from LESSEE, who shall bear and provide deficient amount by depositing same with the Insurance Trustee within ninety (90) days following the request.
 - a. DISTRICT at its option, may pay for such repairs. All costs incurred by DISTRICT shall be repaid to DISTRICT by LESSEE along with interest, at the rates stipulated herein.
 6. If the Insurance Trustee shall for any reason resign, be unable or unwilling to act or continue to act, the LESSEE shall designate another Insurance Trustee in and under the same manner and conditions as provided for in Article 14.(5)(a) above.
- (5) Right of DISTRICT to Insure
- a. If for any reason LESSEE shall neglect or fail to insure or cause to insure and keep insured the improvements on Premises as required by this Lease, or to pay the premiums therefore, DISTRICT may at its option, procure or renew such insurance and pay the premiums thereon.

- b. Any amount paid for insurance by DISTRICT shall become immediately due and payable by LESSEE to DISTRICT. The premiums paid by DISTRICT shall accrue interest calculated in conformance with Article 4.D.
- c. DISTRICT is not required to carry any public liability, public damage or extended coverage insurance on any improvements on the Premises.

C. Uninsured Casualty

An uninsured casualty is a loss for which insurance is not required under this Lease. At any time during the Lease Term should destruction or damage occur to all or any part of LESSEE's improvements caused by an uninsured casualty, LESSEE shall have no obligation to rebuild the improvements and may terminate this Lease by giving DISTRICT one hundred eighty (180) days written notice, within forty five (45) days after such damage or destruction occurs. Should LESSEE terminate this Lease, LESSEE shall, at its own expense, and at DISTRICT's sole discretion, remove the improvements from the Premises to DISTRICT's satisfaction in accordance with Article 9 - . In any event, LESSEE shall leave no damaged or destroyed improvements thereon.

D. Effect of Destruction

Destruction of improvements upon the Premises shall not effect an abatement or reduction in rent, except in the event of termination as provided in Article 9.B.

ARTICLE 15. ASSIGNMENT AND SUBLETTING

LESSEE shall not assign this Lease or any interest herein or the improvement(s) on the Premises or any part thereof or any right or privilege appurtenant thereto without the prior written approval of DISTRICT.

A. Conditions for Assignment of Leasehold

The legal classification of LESSEE as of the Effective Date is: a L.L.C.
(Corporation/Partnership)

- (1) Any change in the legal classification of the LESSEE, including without limitation, sole proprietorship, partnership, corporation, joint venture, or any other entity, natural or artificial, or any transfer of or alteration in the ratio of the evidences of ownership interests in the LESSEE (including without limitation shares of stock equal to or greater than ten percent (10%) of the total shares of stock), shall be deemed an assignment prohibited by this Article, unless the prior written consent of DISTRICT is obtained.
- (2) Any transfer of this Lease or any interest therein from LESSEE by corporate reorganization, merger, consolidation, or liquidation shall be deemed an assignment prohibited by this Article, unless the prior written consent of DISTRICT is obtained.

- (3) Any dispute shall be processed in accordance with the procedure set forth in Article 32 P.

B. Procedure for Assignment

- (1) LESSEE shall file a request with DISTRICT to assign Leasehold which shall include: name and address of the prospective assignee; amount of experience in the field of the permitted use; financial statements and any other information needed to obtain DISTRICT's approval for the assignment.
- (2) Concurrent with filing the request to assign Leasehold, LESSEE shall pay in cash or certified or cashier's check an amount in accordance with DISTRICT's fee schedule for DISTRICT to investigate the proposed assignee's qualifications.
 - a. If the proposed assignee's net worth on the date of assignment does not equal or exceed LESSEE's net worth at the commencement of this Lease, adjusted for inflation, DISTRICT may require LESSEE to guarantee such assignee's obligations hereunder for such period as DISTRICT deems advisable.
 - b. "Net worth", shall mean the amount by which the total of all assets shall exceed the total of all liabilities as determined in accordance with generally accepted accounting principles as approved by the Auditor-Controller of the County of Los Angeles.
- (3) DISTRICT shall approve or disapprove any request to assign Leasehold within ninety (90) days of the date of DISTRICT'S receipt thereof.
- (4) A condition of assignment of all or any part of the Leasehold shall be the payment to DISTRICT of two thousand five hundred dollars (\$2,500).
- (5) Upon transfer of LESSEE's interest in this Lease to a DISTRICT approved person or entity who has unconditionally assumed the obligations imposed by this Lease, such transferor and its predecessors in interest shall be relieved of all obligations hereunder arising after the date of such transfer unless otherwise stated in DISTRICT's approval document.
- (6) A general assignment by LESSEE for the benefit of creditors shall constitute a breach of this Lease.

C. Subletting

LESSEE shall not have the right to sublease any portion of the Premises or its or improvements thereon.

ARTICLE 16. NO SUBORDINATION

DISTRICT shall not subordinate its fee interest in the Premises to any lien or encumbrance created by LESSEE.

ARTICLE 17. RIGHT TO HYPOTHECATE LEASEHOLD

A. Right to Hypothecate Leasehold

- (1) LESSEE shall have the right at any time, and from time to time, to pledge or assign its interest herein to a bank, insurance company or other commercial lender authorized to do business in the State of California ("Lender"), but only as collateral security for one or more loans ("Loan") made by the Lender to LESSEE for the purpose of financing or refinancing the construction of improvements (including major or minor repairs) within the development project which includes the Premises. Any document or instrument purporting to pledge or assign LESSEE's interest in the Lease (in whole or in part) to a Lender as provided in this Article 17 is hereinafter referred to as a "Security Agreement."
- (2) Within five (5) days after execution of a Security Agreement, a true copy of the Security Agreement and the Loan secured thereby shall be delivered to DISTRICT, together with a written notice specifying the name and mailing address of the Lender. If the Security Agreement or a memorandum thereof is recorded or filed, LESSEE shall give DISTRICT not later than ten (10) days thereafter written notice of the date and place of recording or filing and the recorder's document number, book and page reference, or any other identifying reference.
- (3) Following execution and delivery of a Security Agreement, and for as long as the Security Agreement is in effect, this Lease shall not be modified except by a written instrument executed by DISTRICT, LESSEE and the Lender. Except as expressly provided herein, nothing contained in the Security Agreement shall be deemed or construed to relieve LESSEE from the full and faithful observance and performance of its covenants herein contained, or from liability for its failure to observe or perform such covenants, or to constitute a waiver of any rights of DISTRICT hereunder.
- (4) Any Security Agreement permitted hereunder may be in the form of a leasehold mortgage or deed of trust. The proceeds of the Loan(s) secured by the Security Agreement may be used solely for capital expenditures within the development project which includes the Premises.
- (5) No security interest in this Lease shall extend to or affect the fee, the reversionary interest, or any other estate of DISTRICT in and to the Premises or any other land or improvements owned by DISTRICT.
- (6) No more than one Security Agreement shall be in effect at any time during the Lease Term. No Security Agreement shall be binding upon DISTRICT in the enforcement of its rights under this Lease, nor shall DISTRICT be deemed to have any notice thereof, unless such Security Agreement strictly complies with each and every provision of this Article 17. Any Security Agreement which is, entered into in violation of this Article 17 shall be void.

- (7) No Lender shall transfer its rights under a Security Agreement in whole or in part, except to another bank, insurance company or other commercial lender authorized to do business in the State of California.
- (8) No Security Agreement shall be valid unless all of the following conditions are met:
- a. On the effective date of the Security Agreement this Lease shall be in full force and effect, and no default shall have occurred and be continuing hereunder, nor shall any event have occurred which, with the giving of notice or the passage of time or both, would constitute a default hereunder.
 - b. The Security Agreement shall expressly be made subject to the terms, covenants and conditions of this Lease.
 - c. The Security Agreement shall expressly provide that the Lender shall provide evidence to DISTRICT that the Lender has accepted or approved of the completed improvements to be financed or refinanced with the Loan, and that the Loan proceeds have been properly expended by LESSEE.
 - d. The Security Agreement shall expressly provide that any proceeds from fire, extended coverage or other hazard insurance shall be used to pay for the repair or reconstruction of the improvements financed or refinanced with the Loan, and to pay such other expenses as are expressly required by this Lease to be paid from the Loan proceeds.
 - e. The Security Agreement shall provide that copies of all notices of default under the Loan or Security Agreement must be sent to DISTRICT and LESSEE. DISTRICT must have the right, but not the obligation, to cure any default of LESSEE under the Loan or Security Agreement if LESSEE shall fail to do so. DISTRICT shall have not less than sixty (60) days, after the time for LESSEE to cure the default under the Loan or Security Agreement has expired, to cure such default.
- (9) If the Lender succeeds to the interest of LESSEE under this Lease as a result of the exercise of remedies under the Security Agreement or the Loan, or otherwise, it shall not transfer or convey such interest, in whole or in part, except to another bank, insurance company or other commercial lender authorized to do business in the State of California.
- (10) During the term of the Security Agreement and while this Lease is in effect, the Lender shall have the right at any time to perform any obligation of LESSEE hereunder. Any performance of LESSEE's obligations hereunder by the Lender shall be effective for all purposes as if done by LESSEE.

- (11) All rights and obligations of DISTRICT and LESSEE, respectively, under this Lease shall be binding upon the respective heirs, executors, administrators, successors and assigns of DISTRICT and LESSEE, whether or not so expressed herein.
- (12) In the event of any conflict between this Lease and any Security Agreement, the provisions of this Lease shall prevail.

B. Lender's Right to Cure Defaults

- (1) Concurrent with giving notice of default to LESSEE pursuant to Article 21, DISTRICT shall deliver a copy of such default notice to the Lender under any permitted Security Agreement at its address furnished to DISTRICT in accordance with Article 17.A.(2).
- (2) During the term of a permitted Security Agreement, DISTRICT will not terminate this Lease due to any default on the part of LESSEE if the Lender, within sixty (60) days after DISTRICT has sent a written notice pursuant to Article 21:
 - a. Cures such default, if such default can be cured by the payment of money, or if the default cannot be cured by the payment of money, commences and thereafter diligently pursues a cure to completion; and
 - b. Keeps and performs all of the other covenants and obligations of LESSEE under this Lease.
- (3) Notwithstanding the provisions of this Lease restricting assignment, the rights and obligations of LESSEE under this Lease may be assigned to the Lender in lieu of foreclosure, or to the Lender or another purchaser by judicial or non-judicial foreclosure (without, however, releasing LESSEE from any of its obligations hereunder), with the liability of the Lender being limited to the period of its possession of the Premises or ownership of the rights and obligations of LESSEE hereunder.
- (4) If this Lease is terminated by DISTRICT based on LESSEE's default, or if the Lender acquires the rights of LESSEE hereunder, DISTRICT shall enter into a new lease of the Premises with the Lender if the Lender (a) makes written request within sixty (60) days after acquiring such rights, (b) pays all costs of DISTRICT relating to such default and termination and preparation of a new lease, and (c) cures all curable defaults as though the Lease had not been terminated, The new lease shall be for the remainder of the term of this Lease, effective at the date of termination or foreclosure, at the rent and on the same terms and conditions as this original Lease.

ARTICLE 18. BANKRUPTCY OR INSOLVENCY

A. Breach

LESSEE shall be deemed to have repudiated its obligations and to have breached this Lease if, during the term of this Lease either of the following occurs:

- a. A petition to have LESSEE adjudged bankrupt or a petition for reorganization, arrangement or relief under the Bankruptcy Act as now in force or hereafter amended, is filed by or against LESSEE, and if so filed against LESSEE, is not dismissed within sixty (60) days from the date of such filing or;
- b. In any judicial action or proceeding pursuant to any composition of creditors, a receiver or other officer or agent (including LESSEE as a debtor in possession) is appointed to take charge of the Premises or the business conducted therein, and not removed within sixty (60) days of the occurrence.

B. Lease Termination

LESSEE expressly agrees that DISTRICT may at its election terminate this Lease in the event of the occurrence of either of the events described above by giving not less than thirty (30) days notice to LESSEE, and when so terminated, DISTRICT may reenter the Premises and relet to another.

ARTICLE 19. CONDEMNATION

A. Total Take

If the entire Premises shall be taken by condemnation or other proceedings pursuant to law, or sold in avoidance of such condemnation or other proceedings, which is sufficient to render the remaining portion thereof unusable by LESSEE in the sole judgment of DISTRICT (hereinafter "taking"), then LESSEE shall give notice to DISTRICT of its intention to terminate this Lease not more than ninety (90) days after the date of such taking, and this Lease shall terminate as of this date. In the event the Lease is terminated as a result of such taking prior to the tenth (10th) anniversary of the Lease, the award, settlement or payment resulting from such taking (including any award, settlement or payment as compensation by way of severance damage suffered by such portion of the Premises not taken), shall be distributed between the parties as follows:

- a. LESSEE shall participate in such award, settlement or payment as compensation for the depreciated market value of LESSEE's improvement on the Premises through the tenth (10th) year of the Lease, after which the LESSEE will not participate in nor receive any such award, settlement, or payment.
- b. The complete residue of said award, settlement or payment shall be awarded to DISTRICT.

B. Partial Take

If a lesser portion of Premises shall be taken, by condemnation or otherwise, not giving rise to the termination of this Lease, this Lease shall continue in full force and effect, and LESSEE shall promptly repair any damage to said improvement caused by any such taking. In the event of such lesser taking the award, settlement or payment for such taking shall be divided between the parties hereto as follows:

- a. LESSEE shall participate in such award, settlement, or payment so as to be compensated for the portion of LESSEE's improvements on the Premises taken, the cost of repair of the LESSEE's improvements remaining on the Premises not taken, the damage suffered by LESSEE's improvements on the Premises by virtue of the taking of a portion thereof and the depreciation to and cost of removal of LESSEE's improvements on the Premises through the tenth (10th) year of the Lease, after which the LESSEE will not participate in nor receive any portion of such award, settlement, or payment attributable to the leasehold value.
- b. The residue of such award, settlement, or payment shall be awarded to DISTRICT. In the event of such lesser taking not giving rise to termination of this Lease, the Rent payable by LESSEE to DISTRICT after such taking shall be reduced by an amount equal to the product of the multiplication of the rent payable at the time of such taking by a fraction, the numerator of which shall be the number of square feet so taken and the denominator shall be the total number of square feet of the Premises existing immediately prior to such taking. Such Rent reduction shall be effective as of the date of such taking. In no event shall the rent be less than the DISTRICT's minimum rent requirement of \$2,500 per year.

C. Temporary Take

- (1) If the use or occupancy of all or any part of the Premises shall be temporarily requisitioned by any governmental authority, civil or military, this Lease shall continue in full force and effect, and LESSEE shall promptly repair any damage caused by any such taking or requisition to LESSEE's improvements on the Premises.
- (2) In the event of such temporary requisition, there shall be an equitable abatement of Rent, to be determined solely by DISTRICT.

D. Applicability of Article

This Article shall apply only to condemnation or other proceedings or sales in avoidance of condemnation which are instituted by a public agency other than DISTRICT.

E. Waiver

LESSEE hereby waives all rights to so take any or all of Premises or other DISTRICT property by condemnation or other similar action.

ARTICLE 20. DEFAULT

Any and all of the following actions shall constitute an event of default under this Lease on the part of LESSEE:

- a. Failure to pay any installment of Rent when due.
- b. Failure to pay any other monies due DISTRICT after receipt of written notice by LESSEE.
- c. Failure to pay any insurance premiums, liens, claims, demands, judgments, or other charges when due for which LESSEE is responsible under this Lease.
- d. LESSEE maintaining, committing or permitting the maintenance or commission of a nuisance upon Premises or using the same for an unlawful purpose.
- e. Failure to repair or maintain Premises as provided in this Lease.
- f. Abandonment of Premises for a continuous period of thirty (30) days or more;
- g. Failure to perform or a breach of any other covenant, condition or restriction provided in this Lease.

ARTICLE 21. REMEDIES FOR DEFAULT

A. DISTRICT Rights Arising from LESSEE Default

In addition to any other remedies available by law, DISTRICT shall have the non-exclusive right, at its sole election, to pursue any or all of the following remedies in the event of default by LESSEE:

- a. To notify LESSEE in writing identifying the event of default and allowing a period of time, at the sole discretion of DISTRICT, for LESSEE to cure such default. This notice may be accompanied by a notice of termination, setting a date for termination of the Lease in the event the default is not cured within the time granted. Such notice of termination may not set a date for termination of the Lease of less than thirty (30) days from the date notice is given.
- b. To enter and take possession of the Premises, without terminating this Lease and take any action necessary to preserve or maintain the Premises and rent the Premises at the best price obtainable by reasonable effort and for any term and on such conditions as DISTRICT deems proper.

Upon each such reletting, all rentals received by DISTRICT shall be applied first to the payment of rent due and unpaid hereunder; second to the payment of any

loss and expense of such reletting, including administrative fees and costs of any alterations or repairs; third to the payment of any indebtedness due. The residues if any, shall be held by DISTRICT and applied to payment of future rent as the same may become due and payable hereunder. LESSEE shall remain liable to DISTRICT for the deficiency if any, between LESSEE's rent hereunder and rent obtained by DISTRICT on reletting.

- c. To terminate this Lease upon thirty (30) days written notice, and to enter into and upon the Premises and take possession of the same. Upon termination of this Lease, in addition to any other remedies DISTRICT may have at law, in equity or under this Lease, DISTRICT may recover without limitation, any unpaid rent and charges equivalent to rent having accrued, all costs associated with recovering and/or reletting the Premises, all costs associated with performing LESSEE's obligations hereunder, and the worth at the time of such termination of all rent and charges equivalent to rent lost over the remainder of the Lease Term, plus interest calculated in conformance with Article 4.D. until such time that the amount fully owed is received by DISTRICT.

B. Rent Due and Rights Not Waived In Event of Default

- (1) Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or others as provided by law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any Rent due to DISTRICT hereunder or of any damages accruing to DISTRICT by reason of the violation of any of the terms, provisions and covenants herein contained.
- (2) Forbearance by DISTRICT to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of any of DISTRICT's rights hereunder.

ARTICLE 22. SALE OF THE PREMISES BY DISTRICT

In the event of a sale of the Premises by DISTRICT, DISTRICT shall be entirely freed and relieved of all liability under any and all of its covenants and unaccrued obligations contained in or derived from this Lease arising out of any act, occurrence or omission after the consummation of such sale, provided that the purchaser at such sale, shall in writing covenant to and with LESSEE to carry out any and all of the covenants and obligations of DISTRICT under this Lease.

ARTICLE 23. HAZARDOUS SUBSTANCES

A. Definition

For purposes of this Lease, the term "hazardous substances" shall be deemed to include:

- Hazardous, toxic or radioactive substances as defined in California Health and Safety Code Section 25316 as amended from time to time, or the same or a

related defined term in any successor or companion statutes, crude oil or byproducts of crude oil other than which exists on the property as a natural formation, and those chemicals and substances identified pursuant to Health and Safety Code Section 25249.8;

- Substances which require investigation or remediation under any Federal, State or Local statute, regulation, ordinance, order action, policy or common law;
- That which is or becomes defined as "hazardous waste", "hazardous substances", pollutant or contaminant under any Federal, State or Local statute, regulation, ordinance or amendment thereto, including without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and/or the Resource Conservation and Recovery Act (RCRA);
- That which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or likewise hazardous and is or may become regulated by any governmental authority, agency, department, commission, board of instrumentality of the United States, the State of California or any political subdivision thereof;
- Substances, present on or about the Premises which cause or threaten to cause a nuisance thereupon or to adjacent properties or pose or threaten to pose a hazard to the health or safety of persons on or about such property;
- Without limitation, substances containing gasoline, diesel fuel or other petroleum hydrocarbon;
- Without limitation, substances containing polychlorinated bipheynols (PCBs), asbestos or urea formaldehyde foam insulation.

B. Warranties and Representations

- (1) LESSEE hereby warrants and represents that it will not cause or allow to be caused the presence, use, storage or disposal of any hazardous substances on or about the Premises.
- (2) LESSEE hereby warrants and represents that it shall comply with all federal, state, DISTRICT and local laws and regulations concerning the use, release, storage and disposal of hazardous substances on the Premises.

C. Notice

LESSEE agrees to immediately notify DISTRICT when, hazardous substances have been released on the Premises.

D. Damage/Spillage

- (1) In the event of spillage, leakage, or escape ("release") of any hazardous substances for any reason, LESSEE shall immediately notify DISTRICT at

1(800) 675-4357 (HELP), and make necessary repairs and erect necessary restraints and impoundments to prevent discharge into any property, channel, ocean drainage system or underground reservoirs. LESSEE shall also promptly remove any and all hazardous substances that may have leaked, spilled or escaped and restore the Premises and all other affected properties and/or facilities to their former condition or equivalent to the DISTRICT'S satisfaction.

- (2) LESSEE further agrees that no pollutants or water carried pollutants may be used to pressure test a pipeline, or to be discharged into DISTRICT'S property, channel, underground reservoir, drainage system or the ocean unless the LESSEE receives written approval by DISTRICT. In the event such pollutants are inadvertently discharged into any such system, LESSEE shall immediately notify DISTRICT by telephone and take the appropriate action to prevent further such discharge.
- (3) In addition to removing any hazardous substances, LESSEE shall be liable for and reimburse DISTRICT for any and all costs and expenses that DISTRICT may incur or suffer by reason of the escape of such substances from LESSEE'S improvement(s). Such responsibility shall include costs or expenses as DISTRICT may incur by reason of Federal, State, DISTRICT, local or other authoritative agency's laws and regulations.

E. Indemnity

LESSEE agrees to indemnify, defend and save harmless DISTRICT, from and against all liability, expenses (including defense costs, legal fees, and response costs imposed by law) and claims for damages of any nature whatsoever which arise out of the presence or release of hazardous substances on the Premises.

F. Default

The release of hazardous substances on the Premises shall constitute an event of default as defined in Article 20 and shall be subject to the remedies set forth in Article 21.

G. Survival

The provisions, warranties and representations set forth in this Article shall survive the termination of this Lease without limiting the survival of any other provisions of this Lease.

ARTICLE 24. ESTOPPEL CERTIFICATES

DISTRICT and LESSEE shall, respectively, within sixty (30) days after receipt of written request by the other, deliver to the requesting party an executed and acknowledged written statement referred to as an Estoppel Certificate, certifying that (1) this Lease is unmodified and in full force and effect (or if there has been any modification(s) thereof that the same is in full force and effect as modified, and stating the nature of the modification or modifications), (2) to its knowledge the requesting party is not in default under this Lease (or if any such

default exists, the specific nature and extent thereof), and (3) any date(s) to which Rent and other charges have been paid in advance. Each certificate delivered pursuant to this Article may be relied upon by any prospective purchaser or transferee of the Premises or of DISTRICT's or LESSEE's interest hereunder or by any fee or leasehold mortgagee of Premises or of DISTRICT's or LESSEE's interest hereunder or by any assignee of any such mortgage.

ARTICLE 25. JOINDER IN INSTRUMENTS; LOT SPLIT, ZONING

Upon request of the other, DISTRICT at its discretion and LESSEE shall join in any instruments of conveyance, dedication, grant of easement or license, or other instrument as shall be reasonably necessary or convenient to provide public utility service and/or public roadway access to the Premises or any portion(s) thereof or to obtain proper zoning, lot splits, etc., covering the Premises. DISTRICT shall not be required to incur any cost or expense by virtue of the provisions of this Article.

ARTICLE 26. EXCUSABLE DELAYS

If either Party is delayed, prevented or hindered from the performance of any covenant or condition of this Lease due to acts of the other party, acts of God, action of the elements, war, invasion, insurrection, acts of a public enemy, riot, mob violence, civil commotion, sabotage, labor disputes, laws, moratoriums, financial inability excepted, such performance shall be excused for the period of the delay (and the period for such performance shall be extended for a period equivalent to the period of such delay). Nothing herein, however, shall excuse LESSEE from the obligation to pay Rent hereunder.

ARTICLE 27. NON-DISCRIMINATION

A. Use of The Premises

LESSEE doing business with any person, club, business, contractor or organization involved on the Premises, agrees that in the use of the Premises, persons or prospective persons shall not be denied or selected because of race, religion, ancestry, national origin or sex, and shall comply with all Federal and State laws prohibiting discrimination including, but not limited to, the Federal Civil Rights Act of 1964; the Unruh Civil Rights Act; the Cartwright Act; and the State Fair Employment Practices Act.

B. Employees

LESSEE agrees that all persons employed thereby shall be treated equally without regard to or because of race, religion, ancestry, national origin or sex, and in compliance with all Federal and State laws prohibiting discrimination in employment, including, but not limited to, the Federal Civil Rights Act of 1964; the Unruh Civil Rights Act; the Cartwright Act; and the State Fair Employment Practices Act.

C. Subcontractors

LESSEE agrees that subcontractors, bidders and vendors thereof are and shall be selected without regard to or because of race, religion, ancestry, national origin or sex.

D. Records

All employment and rental records shall be open for inspection and reinspection at any reasonable time during the term of this Lease for the purpose of verifying the practice of non-discrimination by LESSEE in the areas heretofore described.

E. Breach

DISTRICT has the option to terminate this Lease or charge damages for each breach of the promises of non-discrimination. The sum of Five Thousand Dollars (\$5,000) is hereby agreed upon as the amount of damages that will be assessed to LESSEE and paid to DISTRICT for each breach of the promises of non-discrimination contained. Said amount has been agreed to by both parties in recognition of the difficulty in fixing actual damages arising from a breach thereof.

DISTRICT's initials _____ LESSEE's initials _____

ARTICLE 28. QUIET ENJOYMENT

DISTRICT covenants that LESSEE upon timely and properly performing its obligations herein shall have the quiet and undisturbed possession of the Premises throughout the Lease Term.

ARTICLE 29. RESERVATIONS

A. Reservation to Use of The Premises

- (1) DISTRICT reserves the right to use the Premises for any and all lawful purposes other than flood control and water conservation, including but without limitation, public transportation, utilities, roads, parks and recreation, parking, public/private development and/or other related uses together with incidental rights of construction and installation of facilities, ingress and egress, operation, and maintenance. The exercise of the rights reserved herein shall not be inconsistent with LESSEE's use or constitute unreasonable interference.
- (2) Interruption of LESSEE's use, for a period at DISTRICT'S sole discretion, to permit construction and installation of other facilities, shall not be deemed unreasonable interference.
 - a. LESSEE shall be notified at least ninety (90) days prior to the commencement of any such construction or alteration. Rent for that portion affected shall abate in proportion during such periods that LESSEE is denied use thereof.
 - b. No utilities or support structures shall be attached to, built upon, or otherwise unreasonably interfere with LESSEE's use without the written approval of LESSEE.

B. Right of Entry for Inspection, Emergencies, etc.

- (1) DISTRICT reserves the right to enter the Premises by its authorized personnel, employee(s), contractor(s), or agent(s) in order to inspect the Premises for any purposes incidental to the rights or duties of DISTRICT, and for the protection,

maintenance, construction, reconstruction and operation of DISTRICT's facilities. The right to inspect reserved to DISTRICT shall not obligate DISTRICT to make inspections to ascertain the condition of the Premises and shall not impose liability upon DISTRICT for failure to inspect.

- (2) DISTRICT shall have the right, as it deems necessary, to immediately possess the Premises for the purpose of preventing sabotage, for the protection of DISTRICT's facilities, and in an emergency where DISTRICT has cause to believe that lives or excessive property or environmental damage are threatened.

ARTICLE 30. WARRANTIES

A. No Warranty of Title

DISTRICT makes no warranties as to whether the Premises delivered to LESSEE are free and clear of any claims, obligations, mortgages, tax assessments, liens and encumbrances. LESSEE may, at its sole cost and expense, procure a policy of title insurance.

B. No Warranty of Soil

DISTRICT makes no covenants or warranties with respect to the condition of the soil, subsoil or any other condition of the Premises either as existing, or as may be discovered by specific tests as delineated in Article 5.B.

C. No Warranty of Use

DISTRICT makes no representations or covenants or warranties as regards LESSEE'S proposed or actual use of the Premises or improvements thereon.

ARTICLE 31. OPERATIONS AND SUPERVISION

A. Operations

LESSEE shall operate all its improvements comparable with other such operations and in a manner similar with those prevailing in the area and other areas in Southern California furnishing the same services and amenities. LESSEE shall at all times during the Lease Term provide adequate security measures to reasonably protect persons and property on the Premises.

B. Supervision by LESSEE

- (1) LESSEE's management shall be personally experienced and skilled in management of operations as described herein. LESSEE shall ensure and provide efficient supervision of LESSEE's operations, using its best skill, and shall keep employed at all times a competent supervisor and any necessary assistants.
- (2) LESSEE's supervisor shall represent LESSEE in its absence for the operation of the facility upon the Premises, and all directions given to LESSEE'S supervisor shall be as binding as if given to LESSEE; provided, however, if

LESSEE's supervisor does not comply with said request, DISTRICT may serve notice pursuant to Article 32.

ARTICLE 32. MISCELLANEOUS

A. Notices

- (1) Any notice to be given or other document to be delivered by either party to the other hereunder may be delivered in person to either party or by private courier or may be deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed to the party for whom intended as follows:

**To DISTRICT: Los Angeles County Flood Control District
P.O. Box 1460
900 South Fremont Avenue
Alhambra, CA 91802-1460
Attention: Mapping & Property Management Division**

**To LESSEE: Fifth Avenue Group LLC
513 South Myrtle Avenue, Suite A
Monrovia, CA 91016
Attn: Richard T. Hale, Jr.**

Copy to:

- (2) Either party hereto may from time to time by written notice to the other party designate a different address which shall be substituted for the one above specified, except that LESSEE shall always provide a California address. If any notice or other document is sent by registered or certified mail, as aforesaid, the same shall be deemed served or delivered twenty four (24) hours after the mailing therefore as above provided.

B. Attorney's Fees

The prevailing party in any action to enforce this Lease shall be entitled to reasonable attorney's fees and costs for any breach and any arbitration, excepting arbitration pertaining to rent.

C. Waiver

No waiver by either party of any breach by the other party of any term, covenant or condition of this Lease shall be deemed a waiver of any other breach of the same or any other term, covenant or condition of the Lease. The payment or acceptance of Rent hereunder shall not be deemed a waiver of any breach of any term, covenant or condition of this Lease.

D. Holding Over

- (1) If LESSEE shall hold over Premises after the expiration of the terms hereof with the consent of DISTRICT, either expressed or implied, such holding over shall be construed to be a month-to-month tenancy only, subject to all the covenants, conditions and obligations hereof.

- (2) LESSEE hereby agrees to pay to DISTRICT the rental at a rate equal to double the sum of the annual rent paid by LESSEE during the last year of tenancy, prorated on a monthly basis however, nothing herein contained shall be construed to give LESSEE any rights to so hold over and to continue in possession of the Premises after the expiration of the terms hereof.

E. Lease Binding Upon Successors and Assigns

Subject to the limitations on assignment, each of the terms, covenants and conditions of this Lease extend to, bind on and inure to the benefit of not only DISTRICT and LESSEE, but each of their successors and assigns. Whenever reference is made to either DISTRICT or LESSEE in this Lease, the reference shall be deemed to include, wherever applicable, the successors and assigns of such parties the same as if in every case expressed.

F. Covenants

All provisions of this Lease, whether covenants or conditions, on the part of LESSEE, shall be deemed to be both covenants and conditions.

G. Negation of Partnership

Nothing in this Lease shall be construed to render DISTRICT in any way or for any purpose a partner, joint venturer, or associate in any relationship with LESSEE other than that of DISTRICT and LESSEE, nor shall this Lease be construed to authorize either to act as agent for the other unless expressly provided in this Lease.

H. Quitclaim

At the expiration or earlier termination of this Lease, LESSEE shall execute, acknowledge and deliver to DISTRICT within ten (10) days after written demand from DISTRICT to LESSEE, any quitclaim deed or other document as may be required by and on a form acceptable to any reputable title company, including DISTRICT's Title Officer, to remove the cloud of this Lease from the title of the real property subject to this Lease. The quitclaim deed shall also confirm title in LESSEE's improvement(s) to DISTRICT which DISTRICT has elected to retain pursuant to Article 9 herein.

I. Number and Inclusion, Joint and Several

Whenever the singular number is used in this Lease and when required by the context, the same shall include the plural, and the word "person" shall include corporation, firm or association.

If there is more than one LESSEE, the obligations imposed under this Lease upon LESSEE shall be joint and several.

J. Headings and Titles

The marginal headings or titles to the paragraphs of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part herein.

K. Compliance with Governmental Regulations

LESSEE shall, at its own cost and expense, promptly and properly observe, comply with and execute, including the making of any alteration, addition or change to the Premises, all present and future orders, regulations, directions, rules, laws, ordinances and requirements of all governmental authorities (including but not limited to state, municipal, DISTRICT and federal governments and their departments, bureaus, boards and officials), arising from the use or occupancy of, or applicable to, the Premises, or the vaults, franchises, or privileges appurtenant to or connected with the enjoyment of the Premises. LESSEE shall have the right to contest or review, by legal procedure or in such other manner as LESSEE may deem suitable, at its own expense, any such order, regulation, direction, rule, law, ordinance or requirement and if able, may have the same canceled, removed, revoked or modified, provided that DISTRICT is not subjected to a criminal prosecution and that DISTRICT's title to the Premises is not subject to forfeiture, and LESSEE hereby agrees to indemnify, defend and hold DISTRICT harmless from and against any civil liability as a result of any such contest of review. Any such proceedings shall be conducted promptly and shall include, if LESSEE so decides, appropriate appeals. Whenever requirements become absolute after a contest, LESSEE shall diligently comply with the same or so much thereof as shall have been judicially sustained.

L. Ineligibility for Relocation Assistance

LESSEE expressly acknowledges that LESSEE is a post-acquisition TENANT, and termination by reasons of an exercise of the rights herein reserved to DISTRICT, breach of the Lease terms by LESSEE, expiration of the term hereof, or termination for any other reason shall not entitle LESSEE to a claim of status as a "displaced person" as such is defined in Section 7260 (b)(c)(d) of the Government Code of the State of California. LESSEE hereby disclaims such status and hereby acknowledges its ineligibility for relocation assistance as provided in Government Code Sections 7260 through 7277, as it exists or as it may be amended.

M. Storage of Materials

LESSEE shall not use the Premises for the temporary or permanent storage of excavated materials, rock, sand, cement, or other material or any equipment except as specifically approved in writing from DISTRICT.

N. Entire Lease

This Lease contains the entire Lease of the parties and of matters covered hereby, and no other previous agreement, statement or promise made by any party hereto which is not contained herein shall be binding or valid unless in writing and properly executed by both parties.

O. Time of Essence

Time is of the essence with respect to obligations to be performed under this Lease.

P. Claims and Protest

(1) During reasonable hours, DISTRICT, its agents or employees shall have the right, but not the obligation, to enter upon and inspect the Premises and

operations and to make written Demand to Perform upon LESSEE to perform its obligations under this Lease. Such Demand shall specify the obligations to be performed. LESSEE shall immediately perform its obligations placed upon LESSEE by DISTRICT. If LESSEE disputes such Demand, within thirty (30) days after any such Demand is given, LESSEE shall file a written Protest of Demand with DISTRICT stating clearly and in detail its objections and reasons.

- (2) If LESSEE does not file such protest within thirty (30) days, LESSEE shall be deemed to have waived and does hereby waive all claims for damages and adjustments against DISTRICT arising out of the Demand.

Q. Monetary Obligations as Rent

All monetary obligations owed by LESSEE to DISTRICT shall be deemed to be Rent.

R. Savings Clause

If any provision or provisions of this Lease are for any reason adjudged to be unenforceable or invalid, it is the specific intent of the parties that the remainder shall subsist, be, and remain in full force and effect.

S. Protection of The Premises

LESSEE shall maintain its facilities in such a manner as to protect DISTRICT's property from damage, injury, loss or liability arising from rainfall or other action(s) of the elements.

T. Authority to Enter Lease

LESSEE and DISTRICT individually and severally attest that they are duly authorized to execute this Lease.

ARTICLE 33. RECORDATION OF LEASE

This Lease or a Memorandum of Lease shall be properly acknowledged by the parties in recordable form and shall be recorded by DISTRICT. As a condition precedent to the recordation, the recording fee and the costs of all municipal and DISTRICT documentary transfer taxes as established by the office of the Registrar-Recorder of Los Angeles County, California, shall be paid by LESSEE.

ARTICLE 34. COUNTY LOBBYIST

LESSEE shall be familiar with and adhere to Los Angeles County Code Section 2.160.010, County Lobbyist. Each County Lobbyist as defined by Los Angeles County Code Section 2.160.010 retained by LESSEE and/or LESSEE'S representative or agent shall fully comply with provisions set forth therein. Failure on the part of any Lobbyist retained by LESSEE or LESSEE'S representative or agent to fully comply with said County Code shall constitute a material breach of this Lease upon which the DISTRICT may immediately suspend or terminate this Lease.

ARTICLE 35. DECLARATION OF KNOWLEDGE BY LESSEE

LESSEE warrants that LESSEE has carefully examined this Lease and by investigation of the site and of all matters relating to the Lease arrangements has fully informed itself as to all existing conditions and limitations affecting the construction of the Lease improvements and business practices required in the operation and management of the uses contemplated hereunder.

ARTICLE 36. DEFINITIONS

ADDITIONAL RENT: Any and all amounts other than annual Rent, including late fees and interest required to be paid by LESSEE under this Lease.

AFFILIATED ENTITY: Any subsidiary corporation, joint venture, partnership or other relationship where LESSEE or any of its principals or owners are officers, shareholders or otherwise interested.

CONSUMER PRICE INDEX-ALL URBAN CONSUMERS (CPI-U): The Index published by the US Department of Labor, Bureau of Labor Statistics that tracks change in the cost of living for all urban consumers in the Los Angeles-Long Beach area.

DAYS: All references to "days" shall be in calendar days unless otherwise noted.

INSURANCE TRUSTEE: The Los Angeles County Flood Control District or any California or federally chartered savings and loan association, a federally chartered bank, or trust company, preferably with an office or branch located within twenty miles of the Premises as shall be approved by DISTRICT.

MAJOR REPAIR: any repair to the Premises and/or improvements thereon for which the total repair cost exceeds five thousand dollars (\$5,000) (base year = 1994) The five thousand dollar (\$5,000) criteria is to be adjusted annually by the increase in the Western District Building Index Published by Marshall and Swift Publication Company or successor indices.

MINOR REPAIR: any repair to the Premises and/or improvements thereon for which the total repair cost does not exceed five thousand dollars (\$5,000) (base year= 1994). The five thousand dollar (\$5,000) criteria is to be adjusted annually by the increase in the Western District Building Index Published by Marshall and Swift Publication Company or successor indices.

SECURITY INTEREST: A form of interest in property which provides that the property may be sold on default in order to satisfy the obligation for which the security interest is given. A mortgage or a deed of trust may be used to grant a security interest in real property.

/

/

/

/

IN WITNESS WHEREOF, the said LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic, by order of its Board of Supervisors, has caused the Lease to be subscribed by the Chairman of the Board and the seal of said DISTRICT to be affixed hereto and attested by its Executive Officer of the Board of Supervisors, and the LESSEE has hereunto subscribed their names, the day and year first above written.

FOR: FIFTH AVENUE GROUP LLC

By: _____

Typed Richard T. Hale, Jr.
Co-Manager

LESSEE

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT,
a body corporate and politic

By: _____
Chairman, Board of Supervisors

"DISTRICT"

ATTEST:

VIOLET VARONA-LUKENS, Executive Officer
of the Board of Supervisors
of the County of Los Angeles

By _____
Deputy

APPROVED AS TO FORM:

LLOYD W. PELLMAN, County Counsel

By _____
Deputy

DKW:in:A:\SANTA ANITA 12L BRD.wpd

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On January 6, 1987, the Board of Supervisors for the County of Los Angeles and ex officio the governing body of all other special assessment and taxing districts, agencies and authorities for which said Board so acts adopted a resolution pursuant to Section 25103 of the Government Code which authorized the use of facsimile signatures of the Chairman of the Board on all papers, documents, or instruments requiring his/her signature.

The undersigned hereby certifies that on this_____day of_____, 20_____, the facsimile signature of_____, Chairman of the Board of Supervisors of the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT was affixed hereto as the official execution of this document. The undersigned further certifies that on this date, a copy of the document was delivered to the Chairman of the Board of Supervisors of the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT.

In witness whereof, I have also hereunto set my hand and affixed my official seal the day and year above written.

VIOLET VARONA-LUKENS, Executive Officer
of the Board of Supervisors
of the County of Los Angeles

By_____

Deputy

(LACFCD-SEAL)

APPROVED as to form
LLOYD W. PELLMAN, County Counsel

By_____

Deputy